Montana Legal Services Association

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EXHIBIT 2
DATE 3/19/13
HB 385

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MEMO

To: Senate Judiciary Committee
From: Amy Hall, attorney with MLSA
RE: HB 385 – revising landlord-tenant duties and time for trial
Primary sponsor: S. Lavin
Date: March 19, 2013

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Good morning, Mr. Chairman and members of the Committee:

My name is Amy Hall. I am an attorney with Montana Legal Services Association, a nonprofit organization that provides civil legal assistance to Montanans in poverty. I have provided legal representation to low-income tenants in Montana for more than seven years.

I am here on behalf of MLSA to express concerns about HB 385. This bill, if passed, would affect many of the Montanans who request assistance from MLSA concerning rental disputes.

Summary of Concerns

HB 385 would be harmful to tenants in Montana because it would make it easier for a landlord to evict a tenant based on grounds that may not be legitimate, it would allow a court to issue an eviction order and a writ of possession without any kind of hearing, which violates tenants' constitutional rights to due process, and it would burden the already overloaded court system with unrealistic time deadlines for courts to act in eviction cases.

Detailed Analysis

These concerns are detailed as follows, with reference to line numbers in the bill:

- Page 1, lines 18-23: As proposed, this section would impose upon the landlord the duty of not knowingly allowing any tenant or other person to do anything that creates a reasonable potential that neighboring tenants may be injured. The amendment removes the three descriptions of injurious activity by a tenant that are currently included in the law (production of drugs, operation of an unlawful laboratory, and gang activity). The proposed language makes this section way too broad, and imposes a burden upon a landlord that is too vague and too limitless. How is a landlord to decide if an activity creates a reasonable potential that a neighbor may be injured? Every neighbor is different, and each of us perceives injury differently. The same activity could be perceived by one neighbor as harmless and by another as hazardous. In these subjective circumstances, do we want state law to require a landlord to take action? Consider these hypothetical examples that could arise in any given tenancy:

  * Tenant1 lawfully keeps a gun at home. Tenant2's child was killed by a gun a year ago in a hunting accident. Tenant2 is terrified of guns and believes that Tenant1's firearm creates a reasonable potential of harm to Tenant2, and repeatedly complains to Landlord asking Landlord to make Tenant1 get rid of the gun. If this amendment passes, there's nothing to stop Landlord from taking action against Tenant1, just because Tenant2 believes that there's a potential that she could be injured by Tenant1's gun. Is that a fair result for Tenant1?

  * In an apartment building that allows smoking, Tenant1 smokes cigarettes in the apartment next door to Tenant2, who claims she is injured by the second-hand cigarette smoke. If this amendment passes, there's nothing to stop Tenant2 from invoking this statute and badgering Landlord to get rid of Tenant1, even though Tenant1 has lived there many years, always pays his rent on time, and is not violating the lease in any way.

  Further, the proposed removal of the three subsections of Section 70-24-321(1)(b) [page 1, lines 21-23], which make clear that no criminal production of drugs, no unlawful laboratories, and no gang-related activities will be tolerated in the rental, makes no sense. For the safety of our neighborhoods, don't we want to be perfectly clear about the landlord's obligation to remove tenants who are engaged in these activities? Perhaps it would be preferable to make this subsection mirror the activities listed as

tenants' obligations in the proposed amendment to Section 70-24-321(3) [page 3, line 30 – page 4, lines 1-4].

- Page 5, lines 1-4: The proposed language in Section 70-24-422(4) concerning creating a reasonable potential that a neighbor may be injured is too vague and too limitless, as described above. Deciding what activities could be injurious to someone else is too subjective and too personal to each individual. Further, it makes no sense to make immediate the tenant's termination under subsection (4) for creating a potential of damaging the premises, while under subsection (3) just above, the law gives a tenant who has destroyed the premises 3 days notice. It is preferable to leave the text of (4) as it is in current law. In practical terms, requiring a tenant to leave "immediately" as proposed in this amendment will not result in a tenant moving her family and all of her belongings any quicker than providing a 3-day notice. No matter how many days is provided in the notice, it takes tenants time to move out.

- Page 5, lines 5-8: The proposed language in Subsection (5) of 70-24-422 would be unconstitutional. Allowing a court to issue an eviction order and a writ of possession without any kind of hearing would violate the due process clauses of the Montana Constitution, as well as the U.S. Constitution. It is unconstitutional to deprive a tenant of her property interest in a rental without giving the tenant notice and a meaningful opportunity to be heard on the grounds alleged against her. Plus, this section of the bill would allow a landlord to arbitrarily evict a tenant based on limited information – such as an accusation that the tenant illegally possesses fireworks -- without giving the tenant any opportunity to provide the whole truth of her circumstances. For example, if this bill passes, then unlawful possession of fireworks (such as within the city limits) would be one of the activities that would result in immediate eviction of that tenant without a hearing. What if your elderly mother is the tenant, and you accidentally leave your son's bottle rockets at her rental? The landlord may find out that your mother has the fireworks in the rental. This bill would allow the landlord to immediately go to the judge and get a writ of possession, without your mother having any opportunity to explain the circumstances.

- Page 5, lines 20-26: This proposed amendment to Section 70-24-427 would require a court to hear an action for possession (an eviction lawsuit) within 3 business days after the tenant's appearance, instead of the current 20 days.

The changes in this section would wreak havoc on Montana courts and would require the creation of more judge positions in the populous counties, if the 3-day deadline were truly to be met. In Montana, we don't have enough judges for them to be able to drop everything on their existing calendars and to devote an hour or more to an eviction hearing upon only 3 days' notice. Judges in courts of limited jurisdiction, as well as in district courts, already have full calendars. It is not realistic to expect them to be able to squeeze an eviction hearing into an already full calendar. Often, under the existing statute, judges are not able to schedule an eviction hearing within the current requirement of 20 days, due to their already overloaded calendars. To expect them to do so within 3 business days is unreasonable, unless the Legislature is willing to provide funding to add more judges to deal with the increased time pressures of this bill.

The same argument applies to the proposed change in subsection (4), [page 5, line 3] to change the number of days for the court to issue a ruling after an eviction hearing from the current 5 days to only 3 days. Judges' schedules make it challenging, if not impossible to meet the current deadline of finalizing a written ruling within 5 days, given their regular docket of criminal cases and other civil cases. To require them to do so within 3 days is unreasonable, and if the judge were to miss this deadline, the losing party could try and assert that missed judicial deadline as grounds for appealing the judge's decision.

Conclusion

HB 385 would have detrimental effects on tenants, on landlords, and on the judges who must rule on those cases. The proposed amendment to Section 70-24-422 (5) is clearly unconstitutional, and if passed, would clog Montana's courts with appeals, which would serve no one's interests.

Thank you for your consideration.